

DOCKET NO.: HHD-CV-20-6131803-S : SUPERIOR COURT  
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CT FREEDOM ALLIANCE, LLC, ET AL. : JUDICIAL DISTRICT OF  
:  
v. : HARTFORD AT HARTFORD  
:  
STATE OF CONNECTICUT :  
DEPARTMENT OF EDUCATION, ET AL. : MAY 24, 2021

### **Final Memorandum of Decision on Summary Judgment**

Summary judgment may now enter in favor of all of the defendants.

The only things standing in the way of a final judgment were the court's desire to see our Supreme Court's then imminent decision in *Casey v. Lamont* and its wish to see the outcome of then-pending legislation in the General Assembly. The Supreme Court has acted. The General Assembly has acted. It is now clear that this court must act too—by granting the defendants what they want.

In *Casey v. Lamont* our Supreme Court found that the Connecticut Constitution permitted Governor Lamont to issue the emergency orders he issued in response to the COVID-19 crisis. Specifically, the Court held that the Governor had not offended the Article Second command that the powers of government be spread over three “distinct” departments: the General Assembly, the Governor, and the Judiciary.<sup>1</sup> The Court reasoned that that the emergency powers granted Governor Lamont by statute were permissible because they were guided by “intelligible principle” developed by the

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<sup>1</sup> Our current Constitution and all of its predecessors may be found at:  
<https://www.cga.ct.gov/asp/Content/constitutions/DocsOfCTGov.pdf>.

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**HARTFORD J.D.**

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General Assembly.<sup>2</sup> To the Supreme Court, the intelligible principle behind the laws empowering the Governor related to there being an emergency in which the Governor would act within contours established by the General Assembly.<sup>3</sup>

To this court these contours were required by our Constitution and had to embrace four key principles:

- The Connecticut Constitution does not permit the General Assembly—no matter how willingly—to grant legislative power to the Governor without limits on what he can do, how he can do it, and how long he can do it.
- General Statutes §28-9 must include a way for the General Assembly to disapprove all orders the Governor issues under the statute.
- For his orders to date, the Governor must submit his orders to the General Assembly to be ratified or rejected.
- Orders issued under General Statutes §28-9 are only valid for six months. The statute does not say the Governor may renew them without legislative action. Therefore, the Governor must ask the General Assembly to renew his power to issue further orders. No powers granted under the act may be for unlimited duration.

These principles are consistent with the *Casey* ruling. The *Casey* Court recognized that no emergency powers statute could be “standard less, nor limitless.”<sup>4</sup> It further recognized that the “governor’s actions have temporal limitations, namely, the period of time the modification or suspension may be enforced is limited to six months.”<sup>5</sup> This court held the temporal limit was required and did not allow the Governor to renew the orders for another six months and then another.

The Supreme Court didn’t disagree with this. It recognized the importance of time limits on emergency powers but about renewal only noted that “the plaintiffs do not

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<sup>2</sup> 2021 WL 1181937, at \*10 (Conn. Mar. 29, 2021).

<sup>3</sup> *Id.*, \*13.

<sup>4</sup> *Id.*, \*15.

<sup>5</sup> *Id.*, \*11.

challenge the governor’s renewal of the emergencies” and that “nothing in this opinion should be construed as offering an opinion on that separate issue.”<sup>6</sup>

On the need for a disapproval mechanism, only the difference between “could” and “should” separate this Court from *Casey*. This court pointed out that the General Assembly had the right under the statutes to overturn the Governor’s declaration of a public health emergency, but not a civil preparedness emergency. This court thought that constitutionally the legislature *should* have such a power.

The Supreme Court recognized this power was lacking from the civil preparedness statute. It noted that a legislative committee nonetheless did meet and discuss the Governor’s declarations and voted against disapproving them. The Court said “we fail to see why the legislature chose not to include a provision for legislative oversight of a governor’s proclaimed civil preparedness emergency, other than for a man-made disaster.” It concluded that: “Certainly, this *could* be addressed by the General Assembly in its current, or a future, legislative session, if the legislature deems it appropriate.”<sup>7</sup>

Of course, the Supreme Court’s “*could*” beats this court’s “*should*”. But for the long term, regardless of the difference between “*should*” and “*could*”, what will matter most is what the General Assembly *did*.

During this legislative session, the General Assembly acted on all four of the points made by the court. It tightened the standards governing emergency powers. It ratified the Governor’s prior acts. Instead of unilateral action by the Governor not provided in the statute, the General Assembly itself twice extended the time during which the Governor might issue orders under the emergency laws. Significantly, it also created a disapproval

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<sup>6</sup> *Id.*, \*11, n.11.

<sup>7</sup> *Id.*, \*14-\*15 and n.13 (emphasis added).

mechanism that applies to the Governor's declaration of a civil preparedness emergency.<sup>8</sup>

This settles the matter. The Supreme Court was clear in *Casey* that the General Assembly has broad latitude in creating mechanisms for the public protection in an emergency, and it has now used that latitude to tighten its oversight. This court has already held that an emergency existed. It has entered judgment on that question and despite the Alliance's hope, it cannot revisit this question now.

The Supreme Court and this court also recognized that emergencies are fluid and that the General Assembly cannot be expected to vote every time a road or a business is to be closed or reopened during a crisis. A court also cannot review week-to-week changes in conditions to say whether the Governor acted within or exceeded his powers. What matters constitutionally is that the Governor follow intelligible principles and face legislative oversight to guard against executive powers wholly and permanently swallowing legislative powers in the name of an emergency.

There can be little doubt that between the *Casey* ruling and the General Assembly's action that principles and oversight exist and have been strengthened. This means this court must deem the Governor's actions within his rights under the Connecticut Constitution.

Its honor satisfied, the Constitution requires nothing more of this court than to grant the defendants a full and final summary judgment—not merely because the lawsuit is moot—but because the actions of the executive have been ratified as correct by both of the other co-equal branches of government.

Final judgment will be entered in favor of all defendants in accordance with this ruling

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<sup>8</sup> The new laws are in House Bill 6672, Special Act No. 21-2 and House Bill 5653 (act number pending).

and the court's earlier ruling on summary judgment.

BY THE COURT

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Moukawsher, J.